

Not To Be Published:

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

IN RE: APPLICATION OF CARL
BRANT,

Plaintiff.

No. C 03- -MWB

ORDER

This matter comes before the court pursuant to a copy of an Application To Proceed Without Prepayment Of Fees And Affidavit (Application and Affidavit) attached to correspondence from plaintiff Carl Brant dated December 13, 2003. Mr. Brant purportedly mailed the original copy of his Application and Affidavit to the Clerk of Court on or about September 2, 2003. However, the Clerk of Court's correspondence records indicate that the Clerk of Court first became aware of Mr. Brant's attempt to pursue an action for "discrimination" against a law firm, identified by Mr. Brant as McGrath, North, Mullins, & Kratz, P.C., and one of its attorneys, identified by Mr. Brant as Mr. Randal M. Limbeck, on or about November 17, 2003, when the Clerk of Court received a letter from Mr. Brant dated November 13, 2003 (Exhibit A). In that letter, Mr. Brant requested a "speedy trial date" for his "discrimination charges." By letter dated December 10, 2003 (Exhibit B), the Clerk of Court responded to Mr. Brant's November 13, 2003, letter, explaining that "[a]fter extensive search, we are unable to locate any such filings regarding a civil suit against the Ute [sic] legal firm of McGrath et al.," but that the Clerk had located files on two other cases brought by Mr. Brant.

Mr. Brant responded to the Clerk's December 10, 2003, letter with what can perhaps best be described as an "angry" telephone call to the Sioux City office on December 12, 2003. In that telephone call, Mr. Brant purportedly informed a Deputy Clerk that he had filed his Application and Affidavit on or about September 4, 2003, and that he had stamped copies to prove it, but a renewed search by the Clerk's Office staff did not reveal any such filing. Attached to a letter dated December 13, 2003 (Exhibit C), and received December 15, 2003, Mr. Brant sent the Clerk's Office a copy of his Application and Affidavit dated September 1, 2003 (Exhibit D). The attached copy of his Application and Affidavit bears a date stamp of "SEP 04 2003," but no file stamp indicating filing with the Clerk's Office. The Application and Affidavit does not identify any defendant or the nature of any cause of action that Mr. Brant is attempting to pursue *in forma pauperis*, nor was a copy of any complaint attached to the Application and Affidavit, despite the reference to such a "complaint/petition/motion" in the first paragraph of the Application and Affidavit. On the other hand, attached to Mr. Brant's December 13, 2003, letter was a copy of a Dismissal And Notice Of Rights from the United States Equal Employment Opportunity Commission, dated August 18, 2003 (Exhibit E), which advised Mr. Brant that the EEOC had closed its file on Mr. Brant's "charge" for "no jurisdiction." The Notice indicates that a copy had been sent to McGrath, North, Mullin, & Kratz in Omaha Nebraska, but does not otherwise indicate the nature of any claim by Mr. Brant against McGrath, *et al.*, or any other purported defendant.

Under the circumstances, the court finds that Mr. Brant attempted to file his Application and Affidavit on or about September 1, 2003, but owing to clerical or other error, by Mr. Brant or other persons unknown, that Application and Affidavit was never entered into the records of the Clerk of Court. Nevertheless, the court finds that justice requires that Mr. Brant's Application and Affidavit be deemed filed on September 1, 2003,

and the Clerk of Court will, therefore, be directed to open a file and docket the Application and Affidavit as filed on that date.

However, the court also finds that Mr. Brant's Application and Affidavit fails to comply with the requirements of 28 U.S.C. § 1915 (1996). That statute provides, in pertinent part, as follows:

(a)(1) Subject to subsection (b) [which pertains to cases brought by prisoners], any court of the United States may authorize the commencement, prosecution or defense of any suit, action or proceeding, civil or criminal, or appeal therein, without prepayment of fees or security therefor, by a person who submits an affidavit that includes a statement of all assets such prisoner [sic] possesses that the person is unable to pay such fees or give security therefor. *Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress.*

28 U.S.C. § 1915 (emphasis added). The Affidavit and Application does include a statement of the affiant's belief that he is "entitled to the relief sought in the complaint/petition/motion." See Exhibit D, first unnumbered paragraph. However, no "complaint/petition/motion" is attached, and it is only by inferences from other correspondence that it appears that the "nature of the action" that Mr. Brant is attempting to pursue *in forma pauperis* is a "discrimination" claim against McGrath, North, Mullins, & Kratz, P.C., and one of its attorneys, Mr. Randal M. Limbeck. The statutory requirement that Mr. Brant's application to proceed *in forma pauperis* state the "nature of the action" could be met by attaching to the Application and Affidavit a Complaint in compliance with Rules 3, 7, and 8 of the Federal Rules of Civil Procedure and Rule 3.1 of the Local Rules of the Northern District of Iowa. However, as currently presented, Mr. Brant's Application and Affidavit will be denied without prejudice to reassertion in a form in compliance with 28 U.S.C. § 1915.

THEREFORE,

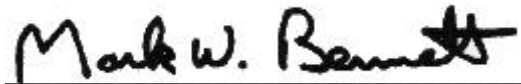
1. The court finds that justice requires that Mr. Brant's Application To Proceed Without Prepayment Of Fees And Affidavit, attached hereto as Exhibit D, **be deemed filed on September 1, 2003**, and the Clerk of Court is **directed to open a file and docket the Application and Affidavit as filed on that date**.

2. The Application and Affidavit is **denied without prejudice** for failure to comply with the requirements of 28 U.S.C. § 1915.

3. Mr. Brant shall have **30 days** from the date of this order within which to file a renewed Application To Proceed Without Prepayment Of Fees And Affidavit and a Complaint in compliance with applicable rules and statutes. If Mr. Brant fails to meet this deadline, the Clerk of Court is directed to close the file without further order of the court.

IT IS SO ORDERED.

DATED this 22nd day of December, 2003.

A handwritten signature in black ink that reads "Mark W. Bennett". The signature is written in a cursive, slightly slanted style. Below the signature is a horizontal line.

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA